



Commonwealth of Virginia
Virginia Information Technologies Agency

MICROSOFT STATE AND LOCAL GOVERNMENT SELECT AGREEMENT

Optional Use Contract

Date: July 31, 2003

Contract #: VA-020409-MSG

Authorized User: State Agencies and Public Bodies

Contractor: Microsoft
One Microsoft Way
Redmond, WA 98052-6399

FIN: 911144442

Contact Person: See page 2 for appropriate representative for State & Local Government and their contact information.

Term: April 12, 2002 – April 30, 2004

Payment: Net 30 days

For Additional Information, Please Contact:

Contract Compliance Information:
Mrs. T. J. Hudson
Contracts Administrator
Phone: 804-371-5971
E-Mail: tj.hudson@vita.virginia.gov
Fax: 804-371-5969

Technical Information:
Ann Sells
Contract Officer
Phone: 804-371-5988
E-Mail: ann.sells@vita.virginia.gov
Fax: 804-371-5969

NOTES: Individual Commonwealth of Virginia employees are not authorized to purchase equipment or services for their personal use from this Contract.

For updates, please visit our Website at <http://www.oas.virginia.gov>

VIRGINIA INFORMATION TECHNOLOGIES AGENCY (VITA): Prior review and approval by VITA for purchases in excess of \$100,000.00 is required for State Agencies and Institutions only.

CONTRACT #VA-020409-MSG
CONTRACT CHANGE LOG

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CONTACTS:

Microsoft VA Account Executive:
(Government)

Beth DeHaven
VOICE: (804) 560-1118
CELL: (804) 337-3262 CELL
EMAIL: bdehaven@microsoft.com

Microsoft East Region Local Government
Account Representative (Cities, Towns,
Counties)

Lisa Roddy
VOICE MAIL: (908) 286 - 4533
CELL: (347) 351-5049
EMAIL: lisarod@microsoft.com

Microsoft Inside Account Representative
(Estimated Retail Price Lists, Product info)

Rachel Pizarro
(800) 426-9400 x11667 OFFICE/VOICE
rachelp@microsoft.com

Microsoft Volume License Site (MVLS)
(License history)

<https://www.licensing.microsoft.com>

Select Online User Guide

<http://www.selectug.mslicense.com>

MS Customer Service Center
(Key codes)

800-352-7140

Microsoft Product Use Rights/Product List

<http://www.microsoft.com/licensing>

NOTE: Microsoft does not sell Select software products except through Large Account Resellers (LARs). To place orders for Microsoft Products, see Contract #VA-020409-DELL. Dell Marketing L.P. is the Large Account Reseller (LAR) for Microsoft products.

Dell Select State and Local Government
Contract Administrator:

Melinda Galindo
VOICE: (800) 981-3355 x45681
FAX: (800) 433-9527
Email: Melinda_Galindo@dell.com

Dell Enterprise – State and Local
Software Pre-Sales Specialist
(Enterprise Agreement pricing)

Fritzi Mulkey
VOICE: (512) 723 – 4848
FAX: (512) 283 – 9287
Email: fritzi_mulkey@dell.com

CONTACTS:

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(Government)

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EMAIL: rachelp@microsoft.com

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(Estimated Retail Price Lists, Product info)

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Dell Select State and Local Government
Contract Administrator:

Melinda Galindo
VOICE: (800) 981-3355 x45681
FAX: (800) 433-9527
Email: Melinda_Galindo@dell.com

Dell Select State and Local Government
Sales Support Specialist (quotes)

Tanya Davis
VOICE: (800) 981-3355 x88021
FAX: (800) 433 – 9527
Email: Tanya_davis@dell.com

Dell Enterprise – State and Local
Software Pre-Sales Specialist
(EA pricing)

Fritzi Mulkey
VOICE: (512) 723 – 4848
FAX: (512) 283 – 9287
Email: fritzi_mulkey@dell.com

Select Agreement Number

01556760

NOT FOR USE WITH THE MICROSOFT BUSINESS AGREEMENT

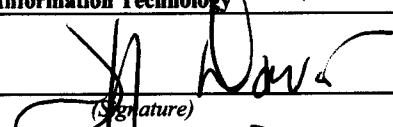
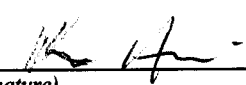
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MICROSOFT STATE AND LOCAL GOVERNMENT SELECT AGREEMENT
Custom

This MICROSOFT STATE AND LOCAL GOVERNMENT SELECT AGREEMENT is entered into between the following entities as of the effective date identified below. If different from the main contact information, any notices must be addressed to the contact and locations outlined in the notices section below. We will notify you in writing if our address information changes. You must notify us in writing if your address changes.

Customer Name The Commonwealth of Virginia, Department of Information Technology	Name and address of contracting Microsoft affiliate MSLI, GP
Street Address and/or post office box 110 South 7 th Street	Street Address and/or post office box 6100 Neil Road Suite 210
City and State / Province Richmond, VA	City and State / Province Reno, NV
Country and Postal Code USA, 23219	Country and Postal Code USA 89511-1137
Contact Name Ann Sells	Account Manager Name, Location, and E-mail Address:
Phone Number (804) 371-5988	Phone Number 775-823-5600
Fax Number (804) 371-5969	Fax Number 775-826-7287
Email Address asells@dit.state.va.us	Email Address Selquest@microsoft.com
For the Attention of: Contracts Engineer	For the Attention of: Dept. 551, Volume Licensing
Customer Notices Information (if different from above)	The agreement and attached documents should be sent to the above address for approval and processing.
Customer Name	All NOTICES should have Copy To: Microsoft Corporation, Law and Corporate Affairs
Street Address and/or post office box	One Microsoft Way
City and State / Province	Redmond, WA
Country and Postal Code	USA 98052
Contact Name	
Phone Number	
Fax Number	425-936-7329
Email Address	@Microsoft.com
For the Attention of:	For the Attention of: Volume Licensing Attorney

This agreement consists of (1) this cover page, (2) the License Purchase Forecast Form, (3) the attached terms and conditions, (4) the Product List, (5) the product use rights applicable to products licensed under this agreement, and (6) any enrollment entered into under this agreement. By signing below, you represent that the information you provide on each of the attached forms is accurate.

Name of Customer (Entity Name): The Commonwealth of Virginia, Department of Information Technology	Name of contracting Microsoft affiliate: MSLI, GP
By: 	By: 
Name: JEFF Davis (Printed)	Name: Kim Akins (Printed)
Title: Contracts Manager (Printed)	Title: Contract Administrator (Printed)
EFFECTIVE DATE: 4-12-02	Date: 4/3/02

LICENSE PURCHASE FORECAST FORM

Part 1: Select Price Level/Forecast Designation:

Because various affiliates of the Commonwealth of Virginia, as of the effective date of this agreement, are party to Enterprise Enrollments with an aggregate count of qualified desktops in excess of 15,000 for each product pool, the discount levels for each product pool shall be set at Level D throughout the term of this agreement.

Part 2: Up-front Payment Option. If you are level A or B in one or more chosen pools identified in Part 1, *the applicable enrolled affiliate will* qualify to receive a discount on the first order submitted with the first enrollment under this agreement. To obtain this discount, the enrolled affiliate must order from its designated reseller at the time this agreement and initial enrollment are signed, a minimum of 1000 points (if it is a level A customer) or 8000 points (if it is a Level B customer) within the product pool for which they want the discount to apply.

You must place an "X" in the appropriate box below if you or an enrolled affiliate is participating in the "Up-front Payment Option" for the designated pool:

Application Pool

☐

System Pool

☐

Server Pool

☐

MICROSOFT STATE AND LOCAL GOVERNMENT SELECT AGREEMENT

TERMS AND CONDITIONS

1. Definitions. In this agreement, “you” means the entity that has entered into this agreement with us, *which is the Commonwealth of Virginia, through its Department of Information Technology*, and “we” or “us” means the Microsoft company which has signed this agreement. In addition, the following definitions apply:

“affiliates” means (i) with regard to you, any government agency, department, instrumentality, division, unit or other office that is supervised by or is part of you, or which supervises you or of which you are a part; together with, as mandated by law, any county, borough, commonwealth, city, municipality, town, township, special purpose district, or other similar type of governmental instrumentality located within your jurisdiction and geographic boundaries, provided that a state and its affiliates shall not, for purposes of this definition, be considered to be affiliates of the federal government and its affiliates; and (ii) with regard to us, legal entities that we own, which own us, or which are under common ownership with us;

“enrolled affiliate” means the party, either you or any of your affiliates, *or any outsourcer*, that has entered into an enrollment under this agreement;

“enrollment” means the document that you or your affiliate submits to us or one of our affiliates before orders can be placed under this agreement;

“Enrollment agreement Number” means the number(s) we assign to each Select enrollment Agreement hereunder.

“license confirmation” means the evidence of license provided by us or by one of our affiliates;

An “outsourcer” is an entity which is party to an Outsourcer Enrollment hereunder, which such party you or an affiliate have engaged either to (i) finance and/or manage the acquisition of certain technology related assets; and/or (ii) manage information technology operations.

“product” means any product available to *your enrolled affiliates* for license under this agreement, as described on the Product List;

“Product List” means, with respect to any licensing program, the statement published by Microsoft from time to time which identifies the products available under the Select program and any product-specific conditions or limitations on the acquisition of licenses for the product;

“reseller” means a Large Account Reseller authorized by us or one of our affiliates to resell licenses in an enrolled affiliate’s area under this program; and

“run” or “use” means to copy, install, use, access, display, run or otherwise interact with.

“Select Agreement Number” means the number we assign to this Select Agreement.

2. Select license program. Upon entering into this agreement, you and your affiliates, *and outsourcers*, may submit enrollments that allow enrolled affiliates to license certain products at volume price levels. Enrolled affiliates can sublicense to affiliates which do not enter into an enrollment, in order to allow them to share the benefits of this agreement. Enrolled affiliates may not acquire licenses under this agreement for the use or benefit of any person or entity other than affiliates. Each enrollment will expire on the expiration or earlier termination of this agreement. *We will assign a Select Agreement Number and notify you of such number upon execution of this Select Agreement, and will assign separate Enrollment Agreement Numbers and notify the applicable enrolling affiliate after the execution of each Enrollment Agreement. Each enrolled affiliate, including outsourcers who are deemed to be enrolled affiliates pursuant to Microsoft State and Local Government Select Outsourcer Enrollments hereto, shall be responsible for compliance with the terms of this agreement and the compliance of the enrolled affiliate’s respective sublicenses, only with respect to the enrolled affiliate(s) enrollment. However, neither you nor any affiliate shall be responsible for compliance with any enrollments to which you or such affiliate is not a party or under which you or such affiliate does not participate. Notwithstanding the foregoing, outsourcers shall be solely responsible for both their own compliance, and the compliance of the participating affiliates for which they perform work, with respect to an Outsourcer Enrollment.*

a. Products. *Except as provided in Section 12(c), you or an enrolled affiliate may order licenses for any products available for government select licensing at the time of your order, in any pool or pools that you have chosen. The Product List provides information on Microsoft products available for licensing under this program, information on point values, product pools, product upgrade or license qualification criteria, and additional product information. New versions of the Product List will be made available to you and enrolled affiliates. Your enrolled affiliates may order standard or upgrade licenses where applicable. Your enrolled affiliates may order an upgrade license only if they (or the affiliates for which they purchase such upgrade license) already have and retain a qualifying license.*

Except as provided in Section 12(c), if you order a product for which the price is payable to a reseller in installments, except as set forth in Section 12(c), you are obligated to make all installment payments to such reseller. Examples of such products for which installment payments may be made include, but are not limited to, Upgrade Advantage, Software Assurance, and the License & Software Assurance bundle.

b. Price levels. The price level assigned for each product pool is based on your total forecast of license acquisitions in that pool as indicated on the License Purchase Forecast Form. You may make your own forecast, or if you or an affiliate is party to an Enterprise

Enrollment (or is entering into an Enterprise Enrollment concurrently with this agreement), you may choose to have *this agreement's* price level for that pool established based on the size of the enterprise included in that agreement.

c. Terms of use. You and any affiliate may run the products for which an enrolled affiliate orders corresponding licenses in a timely manner, *pursuant to the terms of Section 3 below*. In place of a copy of the version licensed, you and your affiliates may run a copy of any prior version of the same product, subject to the product use rights applicable to the version licensed. Use of any product that an *affiliate licenses* from us is governed by product use rights specific to each product and version and by the terms of this agreement. The product use rights applicable to any version of any product released on or before the date of an enrollment will be the product use rights in effect on the enrollment date for that product and version. The product use rights applicable to a version or product released after the date of an enrollment will be the product use rights for that version or product in effect on the date of commercial release under the Select License program. In place of a copy of the language version licensed, you and your affiliates may run a copy of any other language version, provided that the language version you or your affiliate wish to run is available under Microsoft Select at the same or a lower price compared to the product and language on the issue date identified in the license confirmation. In lieu of your obligation to indemnify us under various provisions of the product use rights, you agree that you will be completely responsible for any costs and damages arising from any claim or action to which your indemnity obligation would otherwise apply.

We will provide you with a copy of the applicable product use rights, or will make them available to you either by publication on the World Wide Web at a site we identify to you *in writing* or by some other reasonable means. You acknowledge that you have access to the World Wide Web. We do not transfer any ownership rights in any licensed product and we reserve all rights not expressly granted.

d. License confirmations. *Except as set forth in Section 12(c)*, once an enrolled affiliate has received a license confirmation, the listed licenses (but not rights, if any, to future releases of products) become perpetual, as long as the products are used only as permitted by this agreement and the product use rights. We or one of our affiliates will issue license confirmations covering all licenses ordered. *Provided that a license for a particular copy has been ordered pursuant to Section 3, and until the enrolled affiliate receives the license confirmation covering such copy, its right to use such copy will be temporary. This temporary right to use the copy shall expire upon the earlier of (i) receipt of a license confirmation covering such copy, or (ii) the ninetieth day following the calendar month in which the copy was made, unless the enrolling affiliates' failure to obtain a license confirmation covering such copy prior to such time is due to circumstances which could not be remedied through reasonable efforts of the enrolled affiliate, including but not limited to (i) notification to us (or the reseller) within such 90-day period, and (ii) our (or such reseller's) cooperation therewith in resolving the problem. In the event the enrolled affiliate provides evidence, within such 90-day period, that (a) such purchase order corresponding to such copy was made pursuant to the terms and conditions of Section 3, and (b) payment was made to the reseller for such copy, pursuant to the payment terms agreed upon between the enrolled affiliate and such reseller, then such ninety (90) day period will be deemed extended until such time as a license confirmation for such copy is eventually delivered to enrolled affiliate. Upon receipt of a license confirmation covering a particular copy of software, the enrolled affiliate's right to use such copy shall become perpetual and irrevocable, except to the extent otherwise specifically provided in this agreement (including but not limited to the terms and conditions of Section 12(c) and the Product Use Rights).* We may issue license confirmations either via post, express courier, facsimile, or Internet display. The license confirmations are evidence of license. *In the event that the delivery method is other than post or express courier, we shall identify such alternate delivery method to you in a written notice to you and/or the applicable enrolled affiliate.* Product support is not included with the licenses under this agreement.

e. Transfers of licenses. Once an enrolled affiliate has received a license confirmation, it may transfer the licenses identified on the license confirmation to an affiliate. For all other transfers of licenses, our written consent is required. We will not withhold our consent unreasonably.

In order to transfer licenses, an enrolled affiliate must physically transfer the relevant license confirmations. If transferring only some of the licenses listed on the license confirmation, the enrolled affiliate must record the transfer on the face of the license confirmation and provide a photocopy of the revised license confirmation to the entity to which the licenses are being transferred. In addition, no license transfer will be valid unless the entity to which the licenses are being transferred accepts in writing the applicable product use rights, use restrictions and limitations of liability. Upgrade Advantage subscription rights may not be transferred to, or used for the benefit of, a third party other than an affiliate. *Except as otherwise agreed upon in writing by both parties*, licenses cannot be transferred on a short-term basis.

An enrolled affiliate may transfer an upgrade license for an operating system product licensed under this agreement only as part of the sale or transfer of the computer system on which the product was first installed.

Any transfer made in violation of the requirements or restrictions of this section will be void.

f. Resellers. Each enrolled affiliate must choose and retain a reseller authorized in the enrolled affiliates area. If at any time during the term of its enrollment the enrolled affiliate wishes to terminate the relationship with its designated reseller, or if we discontinue the reseller's authority to resell licenses under this program, the enrolled affiliate must choose a replacement. If the enrolled affiliate intends to change resellers, it may do so by notifying us and its former reseller of the proposed change in writing, on a form that we provide, at least thirty (30) days prior to the date on which the change is to take effect. *Each enrolled affiliate will be responsible for ensuring that all its obligations to its former reseller are met. We will notify you in writing if we discontinue the reseller's authority to resell licenses under this program.*

3. Ordering licenses. Starting on the effective date of each enrollment, the enrolled affiliate may order licenses. Orders must be placed with the reseller named on the applicable enrollment. *Except as otherwise provided in Section 6*, a license must be ordered in the

month in which the copy of a product is first run from a particular computer or similar device. *The enrolled affiliate order must specify version number, language and country of usage for each license. Price and payment terms for all licenses ordered are determined by agreement with the chosen reseller. Nothing in this agreement shall be construed to require that any entity, other than the entity which is identified in the "bill-to" section on a purchase order to the applicable reseller, shall be responsible for payment to its reseller pursuant to such purchase order.*

4. Restrictions on use. You and your affiliates may not:

- Separate the components of a product made up of multiple components by running them on different computers, by upgrading or downgrading them at different times, or by transferring them separately, except as otherwise provided in the product use rights;
- Rent, lease or lend or host products to *third parties*, except where we agree by separate agreement;
- Reverse engineer, de-compile or disassemble products, except to the extent expressly permitted by applicable law despite this limitation.
- Transfer licenses to, or sublicense, products to the U.S. Government.

You acknowledge that products licensed under this arrangement are of US-origin. You and your enrolled affiliates agree to comply with all applicable international and national laws that apply to these products, including the U.S. Export Administration Regulations, as well as end-user, end-use and destination restrictions issued by U.S. and other governments. For additional information on exporting Microsoft products, see <http://www.microsoft.com/exporting/>.

5. Price level adjustments. Every year, on the anniversary of this agreement, we will review your *enrolled affiliates'* license acquisitions within each pool for which you provided a forecast. *This agreement's* price level going forward will be increased, decreased or remain the same based on that review. For the first review we will double the 12-month acquisition history *hereunder* to determine whether your *agreement's* level will be reset. If you extend this agreement, then on each subsequent anniversary we will review your *enrolled affiliates'* license acquisitions for the previous 24 months to determine whether your *agreement's* level will be reset. For any pool for which your *agreement's* price level was established based upon an Enterprise Enrollment, your *agreement's* price level will not be reset for the term of the Enterprise Enrollment.

If your *enrolled affiliates'* license acquisitions from a pool fall below the minimum point count for the A price level, you and your affiliates will no longer be able to acquire licenses from that pool under this agreement.

6. Making copies of software. Each enrolled affiliate may make as many copies of the products licensed under its enrollment as necessary to distribute the products to its users. All copies must be true and complete copies (including copyright and trademark notices) and be made from CD-ROMs, disk sets or a network source acquired from or made available by a Microsoft approved fulfillment source. Each enrolled affiliate may also have a third party make and distribute or pre-install copies on computer hardware in its place, but the enrolled affiliate is responsible for third party actions to the same extent it would be if the third party were its employee. *For the purposes of this Section 6, a third party is any party other than MSLI, GP or its assignee.*

You and your affiliates must make reasonable efforts to make employees, agents and other individuals running a product aware that the product is licensed from us and may only be run or transferred subject to the terms of this agreement. In addition, each enrolled affiliate has the right to (i) run up to 20 copies of any product in a dedicated training facility on its premises; (ii) run up to 10 copies of any product for a 60-day evaluation period; and (iii) make and retain one copy of any licensed product for back-up or archival purposes for each of its distinct geographic locations.

7. Confidentiality. The terms and conditions of this agreement *may be posted on the Commonwealth of Virginia's website.*

8. Warranties.

a. Limited product warranty. We warrant that each version of a product will perform substantially in accordance with our user documentation. This warranty is valid for a period of 90 days from the date you or an affiliate first run a copy of the version. Any warranties imposed by law concerning the products are limited to the same 90-day period. This warranty does not apply to components of products which you and your affiliates are permitted to redistribute under applicable product use rights, or if failure of the product has resulted from accident, abuse or misapplication. If you or an enrolled affiliate notify us within the warranty period that a product does not meet this warranty, then we will, at our option, either (i) return the price paid for the product or (ii) repair or replace the product. This is your (and your affiliates') exclusive remedy for any failure of any product to function as described in this paragraph.

b. This section has been deleted in its entirety. The section number is reserved.

c. NO OTHER WARRANTIES. TO THE EXTENT PERMITTED BY APPLICABLE LAW, WE DISCLAIM ALL WARRANTIES AND CONDITIONS, WHETHER EXPRESS, IMPLIED OR STATUTORY, OTHER THAN THOSE IDENTIFIED EXPRESSLY IN THIS AGREEMENT, INCLUDING BUT NOT LIMITED TO WARRANTIES OF TITLE, NON-INFRINGEMENT, MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE, WITH RESPECT TO THE PRODUCTS OR RELATED

MATERIALS. WE WILL NOT BE LIABLE FOR ANY SERVICES OR PRODUCTS PROVIDED BY THIRD PARTY VENDORS, DEVELOPERS OR CONSULTANTS IDENTIFIED OR REFERRED TO YOU *OR YOUR AFFILIATES* BY US UNLESS SUCH THIRD PARTY PRODUCTS OR SERVICES ARE PROVIDED UNDER WRITTEN AGREEMENT BETWEEN YOU AND US, AND THEN ONLY TO THE EXTENT EXPRESSLY PROVIDED IN SUCH AGREEMENT.

9. Defense of infringement claim. We will defend you *and your enrolled affiliates* against any claim by an unaffiliated third party that any product infringes its patent or copyright, and will pay the amount of any resulting adverse final judgment (or settlement to which we consent) *to the applicable affiliate(s) to which such judgment applies*. You *or the applicable enrolled affiliate* must notify us promptly in writing of the claim and, *to the extent permitted by applicable law of the Commonwealth of Virginia*, give us sole control over its defense or settlement. You *and your enrolled affiliates* agree to provide us with reasonable assistance in defending the claim, and we will reimburse you *and or the applicable enrolled affiliates* for reasonable out of pocket expenses that you *and they* incur in providing that assistance.

Our obligations will not apply to the extent that the claim or adverse final judgment is based on (i) your *(or an affiliate's)* running of the product after we notify you to discontinue running (*and to notify your affiliates to discontinue running*) due to such a claim; (ii) your *(or your affiliate(s)')* combining the product with a non-Microsoft product, data or business process; (iii) use of, or access to, the product by any person or entity other than an employee of you or one of your affiliates; or (iv) your *or your affiliate(s)'* altering the product. *The applicable enrolled affiliate(s)* will be completely responsible for any costs or damages that result from these actions.

If we receive information concerning an infringement claim related to a product, we may, at our expense and without obligation to do so, either (i) procure for you *and your enrolled affiliates* the right to continue to run the allegedly infringing product, or (ii) modify the product or replace it with a functional equivalent, to make it non-infringing, in which case you *and your enrolled affiliates* will stop running the allegedly infringing product immediately. If, as a result of an infringement claim, your use *(or an enrolled affiliate's use)* of a product is enjoined by a court of competent jurisdiction, we will use commercially reasonable efforts to either procure the right to continue its use, replace it with a functional equivalent, or modify it to make it non-infringing.

If any other type of third party claim is brought against you *or an affiliate* regarding our intellectual property, you *or such affiliate* must notify us promptly in writing. *Subject to the terms of Section 13(t)*, we may, at our option, choose to treat these claims as being covered by this section.

10. Limitation of liability.

a. Limitation. There may be situations in which you *or one or more affiliate(s)* have a right to claim damages or payment from us. Except as otherwise specifically provided in this paragraph, whatever the legal basis for *such* claim, our liability will be limited, to the maximum extent permitted by applicable law, to direct damages up to the *100% of the* amount you *or such affiliate(s)* have paid for the product giving rise to the claim. In the case of our responsibilities with respect to third party patent or copyright infringement claims, our obligation to defend such claims will not be subject to the preceding limitation, but our liability to pay damages resulting from any final adjudication (or settlement to which we consent) will be. In the case of free product or code you are authorized to redistribute to third parties without separate payment to Microsoft, our total liability to you will not exceed US\$5000.

b. No liability for certain damages. To the maximum extent permitted by applicable law, neither party nor any of their affiliates or suppliers will be liable *to the other party* for any indirect damages (including, without limitation, consequential, special or incidental damages, damages for loss of profits or revenues, business interruption, or loss of business information) arising in connection with this agreement or any product or service, even if advised of the possibility of such damages or if such possibility was reasonably foreseeable. This exclusion of liability does not apply to either party's liability to the other for violation of the other party's intellectual property rights.

c. Application. The limitations on and exclusions of liability for damages in this agreement apply regardless of whether the liability is based on breach of contract, tort (including negligence), strict liability, breach of warranties, or any other legal theory.

11. Verifying compliance. *Each enrolled affiliate* must keep records relating to the products *it and any of the affiliate(s) to which it sublicenses or transfers licenses* run(s). We have the right to verify compliance, at our expense, during the term of this agreement or any enrollment and for a period of one year thereafter. To do so, we will engage an independent accountant from a nationally recognized public accounting firm, which will be subject to a confidentiality obligation. Verification will take place upon not fewer than 15 days notice, during normal business hours and in a manner that does not interfere unreasonably with your operations. As an alternative, we may require you to accurately complete our self-audit questionnaire relating to the products you and any affiliates use. If verification or self-audit reveals unlicensed use of products, you *or the applicable affiliate* must promptly order sufficient licenses to permit all product usage disclosed. If material unlicensed use is found (license shortage of 5% or more), you *or the applicable affiliate* must reimburse us for the costs we have incurred in verification and acquire the necessary additional licenses *at the then-current non-discounted Estimated Retail Price* for such licenses within 30 days. If we undertake such verification and do not find material unlicensed use of products, we will not undertake another verification of the same entity for at least one year. We and our auditors will use the information obtained in compliance verification only to enforce our rights and to determine whether you *or your affiliates* are in compliance with the terms of this agreement. By invoking the rights and procedures described above, we do not waive our rights to enforce this agreement or to protect our intellectual property by any other means permitted by law.

12. Term and termination.

a. Term. *Provided that it has been executed by both you and us, this agreement will remain in effect for 24 full calendar months following the effective date, unless otherwise terminated as provided herein.*

b. *This section has been deleted in its entirety. The section number was reserved.*

c. Termination. Either party to an enrollment may terminate it for cause. If either (i) only one enrollment is executed hereunder and we terminate such enrollment for cause; or (ii) more than one enrollment is executed hereunder and we terminate two or more such enrollments for cause, then we may also terminate this agreement and all other enrollments under it. Except where the cause for termination is by its nature not curable (or not curable within 30 days), the terminating party will give 30 days notice and opportunity to cure. If we give such notice to an enrolled affiliate, we will give you a copy of that notice as well. If an enrolled affiliate ceases to be your affiliate you must notify us of this fact, and we may terminate its enrollment. Unless terminated for cause, an enrollment will expire or terminate upon the expiration or termination of this agreement.

Except as otherwise provided by Section 6, upon expiration or termination of this agreement or any enrollment, the enrolled affiliate must order licenses for all copies of products it or its affiliates have run under its enrollment for which the enrolled affiliate has not previously submitted an order. Except as set forth below, in the event of termination all unpaid payment obligations for licenses (including installment payments made pursuant to Section 13w) will immediately become due and payable to the applicable reseller(s), and the enrolled affiliate will be entitled to perpetual licenses only after all such payments have been made. However, if (i) an enrolled affiliate terminates its enrollment as a result of our breach, (ii) we terminate an enrolled affiliate's enrollment because it has ceased to be your affiliate, or (iii) an enrolled affiliate terminates one or more remaining installment payments pursuant to one or more purchase orders due to non-appropriation or non-availability of funds, pursuant to Section 13(n), then the enrolled affiliate will have the following options. It may immediately pay its reseller the total remaining amount due, including all installments, in which case the enrolled affiliate will have perpetual licenses for all copies of the products it has ordered. As an alternative, it may pay its reseller only amounts due and payable as of the termination date, in which case the enrolled affiliate will have perpetual licenses for (i) all copies of all products for which payment has been made in full to the applicable reseller, and (ii) the number of copies of products for which payment has been made to the reseller in installments that is proportional to the amount that has been paid as of the termination date. If an enrolled affiliate elects not to make all installment payments to its reseller, (i) license confirmations issued for products for which installment payments are not made will be void, and (ii), we will re-issue license confirmations reflecting amounts paid by you under this paragraph.

In the event of non-appropriation, this paragraph 12 (c) is not intended to create a request for payment but rather is intended to describe the impact that different levels of payment will have on license rights.

13. Miscellaneous.

a. Notices. All notices, authorizations, and requests given or made in connection with this agreement must be sent by post (*prepaid certified mail*), or express courier (*but not by facsimile or email*), to the addresses and numbers indicated in the applicable cover page to this agreement. Notices will be deemed delivered on the date shown on the postal return receipt or on the courier confirmation of delivery.

b. Assignment. This agreement may be assigned by either party only to an affiliate, but assignment will not relieve the assigning party of its obligations under the assigned agreement. If either party assigns this agreement or any enrollment, it must notify the other party of the assignment in writing.

c. Severability. If a court holds any provision of this agreement to be illegal, invalid or unenforceable, the remaining provisions will remain in full force and effect and the parties will amend the agreement to give effect to the stricken clause to the maximum extent possible.

d. Waiver. No waiver of any breach of this agreement shall be a waiver of any other breach, and no waiver shall be effective unless made in writing and signed by an authorized representative of the waiving party.

e. Force Majeure. To the extent that either party's performance is prevented or delayed, either totally or in part, for reasons beyond that party's control, then that party will not be liable, so long as it resumes performance as soon as practicable after the reason preventing or delaying performance no longer exists.

f. Note on Java Support. The products may contain support for programs written in Java. Java technology is not fault tolerant and is not designed, manufactured, or intended for use or resale as online control equipment in hazardous environments requiring fail-safe performance, such as in the operation of nuclear facilities, aircraft navigation or communication systems, air traffic control, direct life support machines, or weapons systems, in which the failure of Java technology could lead directly to death, personal injury, or severe physical or environmental damage. *Sun Microsystems, Inc. has contractually obligated Microsoft to make this disclaimer.*

g. Limitations on actions. Except for any different period required by applicable law, any action arising under this agreement must be brought within two years from the date that the cause of action arose.

h. Entire agreement. The documents identified on the cover page to this agreement constitute the entire agreement concerning the subject matter hereof, and supersede any prior or contemporaneous communications. The terms of these documents shall control in the following order: (i) this State and Local Government Select Agreement (*including any amendments thereto in reverse order of*

execution); (ii) the product use rights; (iii) the Product List rights; and (iv) any and all enrollments under this agreement. The terms of any purchase order or any general terms and conditions you or your affiliates maintain, other than those mandatory terms required by statute or regulation, do not apply. This agreement (except the product use rights and the Product List) can be changed only by an amendment signed by an authorized representative of both parties.

i. Survival. Licenses identified in license confirmations and provisions regarding warranties, limitations of liability, compliance verification and obligations on termination or expiration will survive termination or expiration of this agreement or any enrollment.

j. Independent contractors. Resellers are independent contractors who act in their own name and for their own account, and have no authority to bind or impose any obligation or liability upon us.

k. Applicable law. *This agreement and all enrollments related hereto shall be interpreted in accordance with and governed in all respects by the laws of the Commonwealth of Virginia and any litigation with respect thereto shall be brought in the courts of the Commonwealth. MSLI, GP shall comply with all applicable federal, state, and local laws.*

l. Copyright Violation. Except to the extent an enrolled affiliate is licensed under this agreement, such enrolled affiliate shall be responsible for its violation of our copyright in the products, including payment to its reseller of license fees specified in this agreement for unlicensed use.

m. Cost or Pricing Data. We will not, under any circumstances, accept an enrollment that would require the submission of cost or pricing data.

n. Non-appropriation. *All payment obligations under this contract are subject to both (i) the availability of legislative appropriation for this purpose, and (ii) such funds being made legally available for payment. In the event of non-appropriation of funds by the Legislature, or of such funds not being made legally available for the purchase of items under this contract, then the Commonwealth may cancel its purchase order for the remaining payments for those goods (software) for which funds have not been appropriated or made legally available for payment, subject to the terms and conditions of Section 12(c). You or the enrolled affiliate, as applicable, agree to provide written notice to us as soon as possible after legislative action is completed.*

If any purchases are to be supported by federal funding, and such funding is not made available, then the Commonwealth may cancel its purchase order for the remaining payments for those goods (software) goods dependent on such federal funds without further obligation, except as otherwise provided by Section 12(c).

o. Contractual records. *We shall make all contractual books and records and other documents relating to matters under this Select Agreement available to the Commonwealth and its designated agents for purposes of audit and examination for a period of five years after final payment.*

Contractual records include, but are not limited to, this Agreement, attachments hereto, and modifications hereto.

p. Non-Visual Access to Technology. *All information technology which, pursuant to this agreement, is purchased or upgraded by or for the use of any state agency or institution or political subdivision of the Commonwealth (the "Technology") shall comply with the following non-visual access standards from the date of purchase or upgrade until the expiration of this agreement:*

- (i) Effective, interactive control and use of the Technology shall be readily achievable by non-visual means;*
- (ii) The Technology equipped for non-visual access shall be compatible with information technology used by other individuals with whom any blind or visually impaired user for the Technology interacts.*
- (iii) Non-visual access technology shall be integrated into any networks used to share communications among employees, program participants or the public: and*
- (iv) The technology for non-visual access shall have the capability of providing equivalent access by non-visual means to telecommunications or the other interconnected network services used by persons who are not blind or visually impaired.*

Compliance with the foregoing non-visual access standards shall not be required if the head of the using agency, institution or political subdivision determines that (i) the Technology is not available with non-visual access because the essential elements of the Technology are visual and (ii) non-visual equivalent is not available.

Installation of hardware, software, or peripheral devices used for non-visual access is not required when the Technology is being used exclusively by individuals who are not blind or visually impaired, but applications programs and underlying operating systems (including the format of the data used for the manipulation and presentation of information shall permit the installation and effective use of non-visual access software and peripheral devices.

If requested in writing, we will provide a detailed explanation of how compliance with the foregoing non-visual access standards is achieved and a validation of concept demonstration.

The requirements of this paragraph shall be construed to achieve full compliance with The Information Technology Access Act 2.2-3500 through 2.2-3504 of the Code of Virginia.

q. Non-Visual Access Compliance. We expressly acknowledge that state funds may not be expended in connection with the purchase of an automated information system unless that system meets certain statutory requirements relating to accessibility by persons with visual impairments including those outlined in section 13(p) above. Accordingly, we represent and warrant to the Commonwealth of Virginia that the technology provided to the Commonwealth for purchase is capable, either by virtue of features included within the technology or because it is readily adaptable by use with other technology, of: (1) providing equivalent access for effective use by both visual and non-visual means; (2) presenting information, including prompts used for interactive communications, in formats intended for non-visual use; and (3) being integrated into networks for obtaining, retrieving, and disseminating information used by individuals who are not blind or visually impaired. For purposes of this paragraph, the phrase "equivalent access" means a substantially similar ability to communicate with or make use of the technology, either directly by features incorporated within the technology or by other reasonable means such as assistive devices or services which would constitute reasonable accommodations under the Americans with Disabilities Act or similar state or federal laws. Examples of methods by which equivalent access may be provided include, but are not limited to, keyboard alternatives to mouse commands and other means of navigating graphical displays, and customizable display appearance.

The Commonwealth agrees to provide us with written notice of any claim of non-compliance of one or more products (products) with respect to this Section 13(q), and shall allow us 60 days from the date of such notification in which to cure such non-compliance. Provided that we are unable to cure such non-compliance within set timeframe, the Commonwealth's sole remedy for our breach of this Section 13(q) shall be to receive from us a credit against future license fees equal to the depreciated value of the product Licenses obtained under this Select Agreement for non-compliant products. Upon receipt of such credit, you shall discontinue use of such products, and the licenses for individual copies of such products shall become null and void. This provision shall not be construed to cause the licenses for an entire product line, or all copies of a given product, to become void. Rather, it shall be narrowly construed to apply only to licenses for specific copies of products for which both i) we are unable to cure non-compliance; and ii) the user or users of such copy require compliance in order to perform one or more tasks. For purposes of this paragraph, the depreciated value of a license will be calculated based on straight-line amortization over a twenty-four (24) month period from the date the license confirmation for such license was, or should have been, ordered pursuant to Section 3 of this Select Agreement, "Ordering Licenses."

r. Conflicting terms. If any provision appearing in this agreement purports to cause the Commonwealth to bestow a right or incur an obligation that is beyond the legal authority of the Department of Information Technology to bestow or incur on behalf of the Commonwealth, then that provision shall be deemed of no effect. The Department of Information Technology has been delegated, by the Virginia Department of General Services, the purchasing authority to enter into statewide contracts for the purchase of all Information Technology.

s. Effective date. This agreement is not legally binding until executed by both parties and shall become effective on the date of signature of the Commonwealth of Virginia, through the Department of Information Technology. Each enrollment executed hereunder shall not be legally binding until executed by each party thereto and shall become effective on the date of the signature of the applicable enrolling affiliate.

t. Compliance with Code of Virginia. We agree to comply with all provisions of the Code of Virginia to the extent applicable to this agreement.

u. Rules governing purchase of Software Assurance. Except as provided below, an enrolled affiliate may order Software Assurance for any copy of a product for which the applicable license ordered hereunder, but may only do so simultaneously with the purchase of the applicable license, using the applicable combined "License and Software Assurance" part number as provided by the applicable Product List.

An enrolled affiliate may order Software Assurance for a licensed copy of Windows 2000 Professional, Windows XP Professional, or their successor products, which such copy is licensed pursuant to an Original Equipment Manufacturer license ("OEM License"), as long as such Software Assurance is ordered no later than ninety (90) days following the purchase of the applicable OEM license.

An enrolled affiliate may order Software Assurance for copies of a product, without the need to simultaneously order a new License for those copies, in the following circumstances:

- At the beginning of a new enrollment, the enrolled affiliate may order Software Assurance for copies of products for which the enrolled affiliate has previously obtained perpetual licenses through Upgrade Advantage, Software Assurance or any similar upgrade protection, so long as (i) the new enrollment becomes effective no later than one day following the expiration of that upgrade protection, and (ii) the enrolled affiliate places its Software Assurance order within 30 days following its receipt of its enrollment number.
- During the term of its enrollment, an enrolled affiliate may be eligible to order Software Assurance under its enrollment for copies of certain products licensed through retail sources or from an original equipment manufacturer ("OEM"), provided that the enrolled affiliate places its order within the required time frame. The Product List identifies those products that may be enrolled in Software Assurance as described in this subsection and the applicable time frame for placing an order.
- An enrolled affiliate may also order Software Assurance in any other circumstances expressly permitted in the Product List.
- An enrolled affiliate may renew Software Assurance ordered under its enrollment after it executes an enrollment pursuant to a subsequent Microsoft Select Agreement, pursuant to the terms of such subsequent Microsoft Select Agreement.

v. Estimated retail prices. Microsoft shall establish an estimated retail price for licenses and/or Software Assurance ordered hereunder, at each of the price levels available hereunder, and shall make such list available to you upon your request. The estimated retail prices are intended only as reference points for enrolling affiliates to use in negotiating actual prices with their resellers. The estimated retail prices are subject to change from time to time. Changes may be in the form of promotional estimated retail pricing which is made available for a specified period of time and, at the end of the period, returns to the established estimated retail price. In no event, however, will any change be effective on less than thirty (30) days prior written notice to the applicable reseller. The estimated retail prices will not include taxes.

w. Installment payments. Certain licenses may be payable in installment payment. As of the effective date of this agreement, the license types which may be paid in installments include:

- Upgrade Advantage (which will cease to become available after July 31, 2002);
- Software Assurance; and
- License & Software Assurance bundle.

The availability of installment payments for such license types is subject to change. Your reseller will be able to tell you what products may be paid by installments. Installment payments are not available for products ordered in the last year of this agreement's term.

Ordering a product that is payable in installments establishes a payment obligation, such that the ordering affiliate is obligated to make all installments for such product according to the applicable installment payment schedule, subject to the appropriation of funds for such installments. In the event that funds for an installment payment are not appropriated, the ordering affiliate agrees to notify us immediately, and the terms and conditions of Section 12(c) shall apply.

For those products for which payment is made in installments, the reseller will be invoiced for the first installment upon the date of its order to us, and all remaining installments shall be payable by your reseller to us on each anniversary of this agreement which occurs following the order date (excluding the final day of the term of this agreement). For example, a product ordered, with installment payments, in the 10th month of a 24-month agreement will be paid in two installments, the first of which will be upon the order date in such 10th month, and the second of which shall become due two months later (upon the first anniversary of the agreement). The dates upon which an affiliate's payments shall be due to their reseller shall be determined by agreement between such affiliate and its reseller.

x. Special terms for subsequent renewal of July Maintenance Orders. For the purposes of this Section 13(x), the following additional definitions shall apply:

"Associated License" means any product license for which a July Maintenance License is purchased.

"Associated Renewal Order" means, with respect to any enrollment hereunder, the single purchase order, submitted to the reseller no later than 30 days following the last day of the 24th full calendar month of the term of this agreement, upon which then enrolled affiliate orders solely Software Assurance to renew coverage for one or more Associated Licenses.

"July Maintenance License" means any of the following types of licenses purchased pursuant to any purchase order submitted by an enrolled affiliate to its reseller between July 1, 2002 and July 31, 2002: Upgrade Advantage; Software Assurance; and License & Software Assurance bundle.

"Maintenance Proration Factor" means the fraction that results from dividing (i) the number of complete calendar months which occur between the effective date of this agreement and July 1, 2002; by (ii) the number twelve (12).

"Subsequent Select Agreement" means a Microsoft Select Agreement executed by the Commonwealth of Virginia, following the expiration of this agreement, provided that the effective date of such Subsequent Select Agreement shall be the day which immediately follows the last day of the 24th full calendar month of the term of this agreement.

Provided that each applicable enrolled affiliate complies with the terms of this Section 13(x), then for each applicable enrollment, we agree that we will discount the Estimated Retail Price for its Associated Renewal Order by multiplying (i) the then-current standard Estimated Retail Price for such Software Assurance, based on the applicable volume discount levels of the Subsequent Select Agreement, by (ii) the Maintenance Proration Factor.

In order to qualify for such discount, each applicable enrolled affiliate must:

- Submit to its Microsoft sales representative, no later than September 30, 2002, a list of the product names and quantities for all its Associated Licenses; and

- *Submit to its Microsoft sales representative, at the same time as the submission of its Associated Renewal Order to its reseller, a letter certifying that each Software Assurance license ordered pursuant to its Associated Renewal Order is a renewal of Software Assurance for an Associated License; and*
- *With respect to its orders for July Maintenance Licenses, comply with all rules governing the purchase of Upgrade Advantage and Software Assurance, as such rules are stated in the Product List.*